



## A BILL FOR AN ORDINANCE

RELATING TO SECONDHAND DEALERS AND PAWNBROKERS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. The purpose of this ordinance is to strengthen the current city ordinance relating to the regulation of secondhand dealers and pawnbrokers in order to better protect the public and to aid in the recovery of stolen property.

SECTION 2. Chapter 41, Article 35, Revised Ordinances of Honolulu 1990, is amended to read as follows:

### **"Article 35. Secondhand Dealers and Pawnbrokers"**

#### **Sec. 41-35.1 Definitions.**

As used in this article, unless the context otherwise requires:

"Acquire" means to obtain by purchase, consignment, or trade.

"Consignment shop" means a shop, with an established storefront, engaging in the business of accepting for sale, on consignment, goods, other than precious or semiprecious metals, gems or golf clubs.

"Dealer" means any person, firm, partnership, corporation, or other entity who engages in a business which includes the buying of previously owned articles, and includes any secondhand dealer or pawnbroker, and their authorized representative and/or employees.

"Department" means the Honolulu police department or any duly sworn officer of the Honolulu police department.

"Director" means the director of [finance] customer services of the city or the director's duly authorized subordinates.

"Goods" means personal property previously owned or used, and which is purchased, consigned, pawned, or traded as used property. "Goods" does not include titles or any other form of written security intangible property in lieu of actual physical possession, including, but not limited to, securities, printed evidence of indebtedness, or certificates of title and other instruments evidencing title to separate items of property, including motor vehicles. Such goods do not include household or office furniture,



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pianos, books, clothing, organs, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs.

"Government issued identification" means:

- (1) A passport issued by the United States of America;
- (2) A driver's license issued pursuant to any state or District of Columbia law;
- (3) An identification card issued by any state or local government or the Bureau of Indian Affairs; or
- (4) An identification card issued by any branch of the Armed Forces of the United States of America.

"Identification" means a valid government-issued photographic identification.

"Pawnbroker" means any person, firm, partnership, corporation, or other entity who advances for interest or for an expectation of profit, gain, or reward any sum of money upon security of any goods or chattels taken by such person by way of pawn or pledge, and includes any person subject to Part V of HRS Chapter 445.

"Pawnshop" means the place or premises at which a pawnbroker is registered to conduct business as a pawnbroker.

"Pawn transaction" means the act of lending money on the security of goods or the act of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

"Person" means an individual, partnership, corporation, joint venture, trust, association, or other legal entity.

"Precious or semiprecious gem" means any of the less common and more valuable stones and pearls, including but not limited to amethyst, diamond, emerald, jade, opal, ruby, sapphire, topaz, turquoise, and zircon, whether natural or synthetic, cut or polished.





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"Precious or semiprecious metal" means any of the less common and more valuable metals, including but not limited to gold, silver, platinum, and alloys thereof, without regard to their fineness, but excludes bullion and bullion type coins and bars.

"Purchase" means the transfer and delivery of goods, by a person other than a commercial vendor, to a secondhand dealer or pawnbroker by acquisition for value, consignment, or trade for other goods.

"Scrap" means a piece of precious or semiprecious metal that cannot be readily identified as any piece of describable jewelry.

"Secondhand dealer" means [the same as defined in HRS Section 486M-1.] any person, corporation, or other business organization or entity which is not a scrap dealer as defined in HRS Section 445-231 which is engaged in the business of purchasing, consigning, or trading goods.

"Secondhand store" means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer.

"Seller" means an individual who delivers goods into the possession of a secondhand dealer or pawnbroker in connection with a transaction.

"Transaction" means any pawn, purchase, consignment, or trade of goods by a secondhand dealer or pawnbroker.

"Transaction form" means the instrument on which a secondhand dealer or pawnbroker records pawns and purchases."

**Sec. 41-35.2**      **[License required—Denial, suspension, and revocation.] Non applicability.**

This article does not apply to:

- (a) [It is unlawful for any person to engage in business as a secondhand dealer without obtaining a license issued by the director in accordance with the terms, conditions and penalties enumerated in HRS Chapters 445 and HRS Chapter 486M.] Any secondhand transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization.



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- (b) [The director may deny, suspend or revoke such license for violation of any provision of this article or HRS Chapters 445 and HRS Chapter 486M.] A law enforcement officer acting in an official capacity.
- (c) A trustee in bankruptcy, executor, administrator, or receiver.
- (d) Any public official acting under judicial process or authority.
- (e) A sale on the execution or by virtue of any process issued by a court.
- (f) Any garage or yard sale operator who holds sales less than 20 weekends per year.
- (g) Any person who, pursuant to a written agreement, sells household personal property as an agent for the property owner or their representative at that person's residence.
- (h) The purchase, consignment, or trade of goods from one dealer to another dealer when the selling dealer has complied with the requirements of this chapter.
- (i) Any person accepting a good, other than precious or semiprecious metal or gem, in trade for a similar item of greater value.
- (j) Any person purchasing, consigning, or trading goods, other than precious or semiprecious metals, gems, or golf clubs, at a flea market, trade show, farmer's market, or any other conglomeration of sellers, regardless of whether at a temporary or permanent business location.
- (k) Any auction business as defined in Part II of HRS Chapter 445.
- (l) Any consignment shop as defined in Section 41-35.1.
- (m) Any person offering his or her own personal property for sale, purchase, consignment, or trade via an Internet web site, or a person or entity offering the personal property of others for sale, purchase, consignment, or trade via an Internet web site, when that person does not benefit from the sale of the item.
- (n) A business whose primary business is the sale, rental, or trade of motion picture video in digital format or video games, if the business:
  - (1) Requires the sellers of goods to have a current account with the business;



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- (2) Has on file in a readily accessible format the name, current residential address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and thumbprint of each seller of goods;
- (3) Purchases goods from the property owner or his or her representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states that the seller is the lawful owner of the property;
- (4) Retains such purchase agreements for not less than 1 year; and
- (5) Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or another authorized user of the seller's account with that business.
- (o) Secondhand dealers or pawnbrokers are exempt from the provisions of this section for all transactions involving secondhand sports equipment except secondhand sports equipment that is permanently labeled with a serial number, or golf equipment.
- (p) A motor vehicle dealer as defined in HRS Chapter 437.
- (q) Scrap dealers regulated under HRS Chapter 445.

**Sec. 41-35.3**      **[Fee.] License required.**

[The annual fee for a secondhand dealer license shall be \$100.00, payable to the director.] License required.

- (a) It is unlawful for any person to engage in business as a secondhand dealer or pawnbroker without obtaining a license issued by the director in accordance with the terms, conditions, and penalties enumerated in HRS Chapters 445 and 486M.
- (b) A separate license is required for each secondhand shop or pawnshop location and each licensed shop shall be operated out of an established storefront. Any license not operated out of an established storefront will expire five calendar days after its issued date.





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- (c) A licensee who seeks to move a secondhand shop or pawnshop to another location must give 30 days prior written notice to the director by certified or registered mail, return receipt requested, and the director shall then amend the license to indicate the new location. The licensee must also give such written notice to the department.
- (d) The secondhand dealer's or pawnbroker's license shall be conspicuously displayed at the licensed location.
- (e) The director may deny, suspend, or revoke such license in accordance with Section 41-35.4 for violation of any provision of this article or HRS Chapters 445 and 486M.

### **Sec. 41-35.4      Suspension and revocation.**

The director shall suspend or revoke any license upon a finding that:

- (a) The licensee has violated this article or has aided or conspired with another person to violate this article;
  - (1) For the second conviction for violation of this article a suspension of license for one calendar days shall be imposed.
  - (2) For a third conviction for subsequent violation within a 12-month period, a suspension of seven calendar days shall be imposed.
  - (3) For a fourth conviction for subsequent violation within a 12-month period, a suspension of 14 calendar days shall be imposed.
- (b) A condition exists that, had it existed when the license was issued, would have justified the agency's refusal to issue a license.
- (c) The notification of the suspension shall be sent by the director via registered mail to the address listed on the secondhand dealer or pawnbroker license. Return of the registered mail receipt shall fulfill the requirements of service.
- (d) The revocation, suspension, or surrender of a license shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any seller. Any pawn transaction made by a person without benefit of a license is voidable, in which case the person forfeits the right to collect any monies,



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including principal and any charges, from the seller in connection with such transaction and shall be obligated to return to the seller the goods in connection with such transaction.

- (e) Upon the request of a law enforcement official, the director shall release to the official the name, address, and business history of any licensed secondhand dealer or pawnbroker.
- (f) For the purposes of this section, "conviction" shall include all types of convictions including deferrals, and no contest pleas.

### **Sec. 41-35.5 Recordkeeping requirements.**

- (a) At the time the dealer enters into any pawn or purchase transaction, the dealer shall complete a transaction form for such transaction, including an indication of whether the transaction is a pawn or a purchase, and the seller shall sign the completed transaction form. The design and format of the transaction form shall be designated by the chief of police of the Honolulu police department.
- (b) Upon completing the transaction form, the dealer shall record the following information, which must be typed or legibly printed in ink in English:
  - (1) The name and address of the dealer;
  - (2) A sequential transaction number;
  - (3) The time and date of the transaction;
  - (4) A photograph and a complete and accurate description of goods offered for purchase or pawn, including the following information, if applicable:
    - (A) Brand name;
    - (B) Model number;
    - (C) Manufacturer's serial number;
    - (D) Size;
    - (E) Color, as apparent to the untrained eye;



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- (F) Precious metal type, weight, and fineness, if known;
- (G) Gemstone description, including the number of stones; and
- (H) Any other unique identifying marks, numbers, names, or letters;
- (5) Scrap items shall be described as "unidentifiable remnant" and shall include the precious metal type, weight, and fineness, if known;
- (6) Full name and current residential address of the person from whom the goods were acquired;
- (7) Height, weight, date of birth, age, gender and any other visible identifying marks of the person from whom the goods were acquired;
- (8) A thumbprint, free of smudges and smears, of the person from whom the goods were acquired;
- (9) The amount of money paid or loaned for each item or the monetary value assigned to each item in connection with the transaction; and
- (10) Any other information required by the forms approved by the department.
- (c) The dealer shall require verification of the identification by the exhibition of a valid government-issued photographic identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon.

### **Sec. 41-35.6      Retention of records.**

Dealers shall complete a transaction form at the time of the actual transaction.  
Dealers shall maintain a copy of a completed transaction form on the registered premises for at least one year after the date of the transaction.





# CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
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### **Sec. 41-35.7 Submission of records.**

- (a) If the department authorizes appropriate software to be used by secondhand dealers or pawnbrokers, transactions may be electronically transferred. The dealer shall, at the end of each business day, ensure that all records of transaction have been entered into the appropriate software and transmitted so that the information is available to the department.
- (b) Non electronically recorded transactions shall be transmitted to the department at the end of each business day, by a method consistent with Section 486M-2, HRS.
- (c) For the purpose of a criminal investigation, the appropriate law enforcement agency may request that the dealer produce an original of a transaction form that has been electronically transferred. The dealer shall deliver this form to the department within 24 hours after the request.
- (d) When an electronic image is part of a transaction, the secondhand dealer or pawnbroker must maintain the electronic image in order to meet the recordkeeping requirements applicable to the original transaction form.
- (e) The dealer shall, upon request by the department, provide a clear and legible copy of all images related to the requested transaction.

### **Sec. 41-35.8 Inspection of records and premises.**

- (a) The entire registered premises and required records of each dealer are subject to inspection during business hours by the department.
- (b) If the goods are being stored in a secure location off premises, they must be made available for inspection within 24 hours of the department's initial request, or the next immediate business day if the department's initial request is made on a weekend or state holiday.

### **Sec. 41-35.9 Holding period.**

- (a) A dealer shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any goods within 30 calendar days of the date of acquisition of the goods. If the transaction was filed electronically, then the holding period will be reduced to 15 calendar days. Such holding periods are not applicable when the person known by the dealer to be the person from whom the goods were



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acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

- (b) A dealer must hold goods at the licensed location or other secure location within the City and County of Honolulu during the holding period.
- (c) A dealer must maintain actual physical possession of all goods throughout a transaction. A dealer shall not accept title or any other form of security in goods in lieu of actual physical possession.
- (d) Upon reasonable suspicion that goods held by a dealer are stolen, a police officer may recover the goods into evidence.

### **Sec. 43-35.10 Prohibited acts.**

A dealer, or any employee or agent of a dealer may not:

- (a) Falsify or intentionally fail to make a transaction form.
- (b) Refuse to allow the department to inspect completed transaction forms or pawned or purchased goods.
- (c) Obliterate, discard, or destroy a completed transaction form sooner than the required retention period required in Section 41-35.6.
- (d) Make any agreement requiring or allowing the personal liability of a seller or the waiver of any of the provisions of this section, or HRS Chapters 445, Part V, and 486.
- (e) Knowingly enter into a pawn or purchase transaction with any person who is under the influence of alcohol or controlled substances when such condition is apparent.
- (f) Knowingly enter into a pawn or purchase transaction with a person who is under the age of 18.
- (g) Conduct any transaction with any person using the name of another or the registered name of another's business.





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- (h) Conduct any transaction at any location other than the specific address listed on their secondhand dealer or pawnbroker license.
- (i) Lease goods to the seller or any other party.
- (j) Operate a secondhand shop or pawnshop between the hours of 11 p.m. and 7 a.m. of the following day.
- (k) Make purchases or sales through any business associate not registered in compliance with the provisions of this article.

### **Sec. 41-35.11      Pawn transactions.**

In addition to all provisions of HRS Chapters 445, Part V, and 486M, when conducting a pawn transaction, a pawnbroker shall also adhere to all provisions of this article.

### **Sec. 41-35.12      Penalty for violations.**

Except where otherwise provided in this article, a person who knowingly violates any provision of this article commits a misdemeanor.

### **Sec. 41-35.13      Fees.**

The annual fee for a secondhand dealer license or pawnbroker's license shall be \$100.00, payable to the director."

SECTION 3. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.



**CITY COUNCIL**  
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SECTION 4. This ordinance shall take effect upon approval.

INTRODUCED BY:

Ernest Martin (BR)

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DATE OF INTRODUCTION:

July 30, 2013  
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu

**FILED**  
**JUL 30 2015**  
PURSUANT TO ROH Sec. 1-2.4